

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

April 4, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-0605**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**J. P. MACH, INC.,**

**Plaintiff-Appellant,**

**v.**

**WAYNE STEWART, d/b/a  
CIRCLE S. FARMS,**

**Defendant-Respondent.**

APPEAL from an order of the circuit court for Portage County:  
JOHN V. FINN, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. J. P. Mach, Inc., appeals from an order dismissing his complaint against Wayne Stewart. The issue is whether the trial court had jurisdiction over Stewart, a Florida resident. We review the question as a matter of law and decide it without deference to the trial court. *Marsh v. Farm Bureau Mut. Ins. Co.*, 179 Wis.2d 42, 51, 505 N.W.2d 162, 165 (Ct. App. 1993). We reach the same conclusion as the trial court, however, and therefore affirm.

Mach is a potato wholesaler headquartered in Wisconsin. Stewart grows potatoes commercially on his 300-acre farm in Florida. Through telephone and fax communications, Stewart contracted to sell Mach some potatoes, which Mach would pick up at the farm. Mach commenced this action, in Wisconsin, when Stewart allegedly failed to deliver under the contracts.

During the course of negotiations, Stewart called Mach officials in Wisconsin on several occasions. On occasion he called other Wisconsin potato dealers as well. He signed the three contracts at issue in this case while in Florida, and faxed them to Wisconsin. Mach asserts jurisdiction in Wisconsin solely on these contacts, as Stewart admittedly had no other connection to this state.

Stewart lacks the requisite contacts with this state to establish jurisdiction. Mach contends that the telephone and fax contacts are sufficient under any one of three jurisdictional statutes: § 801.05(1)(d), STATS. (local presence or status); § 801.05(4), STATS. (local injury: foreign act); and § 801.05(5)(e), STATS. (local services, goods or contracts). We disagree. For the court to have had jurisdiction under § 801.05(1)(d), Stewart must have engaged in substantial activities here at the time the action was commenced. *Sub-Zero Freezer Co. v. R. J. Clarkson Co.*, 159 Wis.2d 230, 234, 464 N.W.2d 52, 54 (Ct. App. 1990). However, there is no evidence that Stewart conducted any business with Wisconsin dealers for a year and one-half before commencement of this action. Nor can Mach assert jurisdiction under § 801.05(4) because that section is limited to tort actions. *Nagel v. Crain Cutter Co.*, 50 Wis.2d 638, 643, 184 N.W.2d 876, 878 (1971). Finally, § 801.05(5)(e) does not convey jurisdiction unless the resident plaintiff receives goods of value from the nonresident defendant. *Capitol Fixture & Woodworking Group v. Woodma Distrib.*, 147 Wis.2d 157, 161, 432 N.W.2d 647, 649 (Ct. App. 1988). The only thing Mach received from Stewart were faxed contracts. Those were not things of value under the statute.

Our decision that none of the statutory grounds for jurisdiction exist makes it unnecessary to determine whether a Wisconsin proceeding would violate Stewart's due process rights.

*By the Court.*—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.